Teaching of Human Rights in Cambodia - (1992 - 96)

- AN OVERVIEW -

Prepared by

Basil Fernando



Asian Human Rights Commission &
Asian Legal Resource Centre
Flat E, 3rd Floor, Kadak Building, 171 Sai Yee Street,
Kowloon, Hongkong.
Tel: +(852) - 2698-6339 Fax: +(852) - 2698-6367
Email: alegrcen@hk.super.net / ahrchk@hk.super.net

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I. SOCIO-POLITICAL CONTEXT

There is a tendency to regard political change as the sole arena of human rights. However in the third world context in general and in a situation of a country like Cambodia in particular the main area of human rights work in the short run is the area of social change.

While political change and social change are linked, they are not identical. Under different circumstances the relationship between these two fields -- social change and political change -- can either be closer or relatively distant. In Cambodia, while very rapid social change is taking place, political change is slow and in fact is extremely slow.

Causes For Rapid Social Change

It would be useful at this stage to reflect as to why rapid social change is taking place in Cambodia at present.

* Psychological distancing from the Pol Pot period.

* Distancing from the period of intense civil war.

* Rapid increase in the mobility of the people within the country. This also includes the greater ease in leaving and entering the country.

* Some degree of normalization of services such as transport, banking, etc. There have been initial, though rudimentary, changes in such areas as health, education and counselling services. Elementary changes in the education system include attempted changes in the school examination system. There have also been attempts to strengthen administrative systems in fields such as agriculture.

* Distancing from the social control of communes towards greater (though slow) development of the community. The commune was a system for socio-political

control. The commune system as it existed in Cambodia was designed to disrupt the natural development of the community.

But while communes still exist as part of and still play a significant role in the administrative structure in Cambodia, their political function has been reduced enormously. The inner control of the community by the commune is being rejected by the people while other developments such as commerce, etc. have also influenced the development of a greater community sense.

What this implies is not that there is a total transformation from the earlier situation but that the situation has become more fluid and that there will be greater potential for positive reception for inputs towards community development.

- Greater belief in the possibility of relative stability.

- Greater hope of freer development of personality and family.

- Increasing critical function of the society. This takes place on two fronts: in the sphere of oral communication and in the sphere of media. While there are rigorous controls of the media there is hardly any possibility of control of oral communication. Even in the sphere of the media, despite rigorous controls, there is rapid growth of expression as reflected by the expansion of media activities and publications.

- Privatization which ironically has the effect of reducing the functions of the State.

- Early stages of development of urbanization by way of several new enterprises, such as garment factories. About 10,000 persons have begun to work in these ventures. Despite new social problems associated with this, these industries are a new experience which started from around 1995.

- Greater contest of opinions in various aspects of life. This is a very important part of the development of civil society.

- Growing acceptance of the legitimacy of the concept that development of Cambodia will be the work of many agents and not only of a single agent.

- Vastly expanding activities of the NGOs, particularly local NGOs.

- Enormous amount of human rights activities, particularly training activities, throughout the country.

Causes for Slow Political Change

- The elementary stage of the State formation. While State formation up to 1970 itself was a very rudimentary one, even the little achievement of that period was lost during the Pol Pot period when a policy of wiping out of the past was carried out consciously. The period that followed up to the signing of the Paris agreements was a period of intense civil war and formation of the State did not take place at this time

since parts of the country were controlled by four different factions. While most of the country came under a single rule after the UN sponsored elections, the issue of transfer of power was not resolved and the power contest has continued. As a result development of State institutions became a difficult affair.

- ✧ The entrenched power of the military, particularly the military hierarchy. This is the most vital obstacle to political change.

- ✧ Almost complete absence of a legal framework within which the State can function according to set norms and standards. The result is a situation of anarchy and dependence on personal initiatives of different leaders.

- ✧ The weakness of the reform structures envisaged by the Paris Agreements which completely left out the area of reconstruction of a legal framework.

- ✧ Extreme limitations of human resources required to reform legal and civil administration. This absence is due to the nature of the killings during the implementation of the policy of wiping out the past as well as to the continuing instability in Cambodia which prevents the return of overseas Khmers to contribute to the reconstruction of their homeland.

- ✧ Lack of understanding and sensitivity of many expatriates involved in advisory and other reconstruction activities in Cambodia. The attempt to transfer experiences without understanding the unique difficulties experienced in Cambodia has resulted in considerable waste of resources and time. Novices parading as experts are common in several assistance programmes by foreign agencies.

- ✧ Absence of the concept of the rule of law. Political power is usually seen as naked use of force rather than use of authority according to rules laid down by law prescribing norms and standards by which social behaviour should be governed.

- ✧ The lack of belief in the possibility of transfer of power by legitimate processes and by peaceful means.

Implications Resulting from this Situation of Rapid Social Change and Slow Political Change

- ♦ As far as human rights NGOs are concerned it is necessary to take advantage of the rapid social change in order to expand their areas of activity. In this way, more people can be made aware of human rights.

- ♦ The need to take into consideration the primacy of restoring the rule of law above all other considerations. While this would be a slow process, the rapid social change now taking place in Cambodia will provide more opportunities for legal reform. On the other hand, if there is no improvement of the rule of law, many of the achievements in terms of social change will fail to bear the fruits expected by the people. People will be totally under the control of robbers and their gangs.

- The need to see the link between elections and the rule of law. It is a myth that free and fair elections can be held without a basic framework of law. The May 1993 election was held under special machinery totally controlled by the UN. At present, however, any elections would be held under domestic conditions that have not improved in any way. There is now near complete anarchy which is incompatible to free and fair elections. Thus any request for monitoring elections must be accompanied by an agitation for the establishment of a basic framework for legal reform.

II. CAMBODIAN NGOs - A BROAD ASSESSMENT

Creating a Common Human Rights Language

The human rights NGO movement in Cambodia has expanded vastly. At its inception in 1992 – though many people rallied around it perhaps because of the terrible human rights violations experienced by the Cambodian people in the previous two decades – there were very few common conceptions related to human rights. Even the idea of separation of powers was a very difficult concept to grasp among Cambodian activists who participated in earlier training programs.

From this beginning, the Cambodian human rights movement has moved a vast distance. Thanks to thousands of training programs held during the last four years, most of the basic conceptions of the universal discourse on human rights are now familiar to a sizeable number of persons in Cambodia. Thus, the period from 1992 up to now could be characterized as an introductory period on human rights education – a laying of the foundation of understanding – on which a more sophisticated discourse on human rights can now be launched now.

But while paying highest compliments to primarily the Cambodians and also others who contributed to make this achievement possible, it should not be forgotten that what the country has passed through is only its introductory period.

The common language of human rights in the Cambodian context is also the common language of democracy. Prior to the 1993 elections, the UNTAC programs did not include programs on education in democracy. This has been noted by some of the prominent persons in the UNTAC Electoral Component itself during that time. As a part of human rights work, basic concepts of democracy were introduced into the country. Thus, the common language of human rights would be an invaluable resource in programs devoted to the promotion of democracy in Cambodia.

Human Rights Activism

On the basis of the education on human rights, many activities have been carried out in the fields of monitoring mainly and also in advocacy and lobbying. These activities

include representations to authorities, representations to UN agencies and activities directed to create public awareness. In actual practice, education, monitoring and activism are combined.

In many other countries in Asia, this combination is now quite sophisticated. There are joint activities in many areas such as campaigns on women's issues, children's issues, political rights issues on particular countries, as well as against unjust forms of economic development which affect people's rights. Cambodian NGOs have also been playing a role as partners in these activities.

In the near future, it is quite likely that the training programs and the activist programs will become much more greatly linked than in the past. This implies that, during the stages of preparation of training materials, the requirements of multi-disciplinary activities of human rights NGOs need to be given special attention.

Growth of the Women's Human Rights Movement

In a country where 63% of the population are women and one-third of households are women-headed, it is perhaps no surprise that women have taken a very active role in the human rights movement. They have created their own common language for discussion of women's rights. They have easily moved in the field of economic, social and cultural rights together with civil and political rights. While the initial discussions in the women's movement were around the issue of domestic violence, now these have expanded into issues such as sex trafficking, children's rights, credit schemes, counselling and many other diverse fields.

They have also shown their capacity for monitoring women's rights and for producing creditable reports on the situation of these rights. There have also been improvements in the legislative sphere. The State has responded to the activism of women by creating a Ministry on Women. Cambodian women also are constantly taking part in international gatherings on women-related issues.

Community Services to Assist the Resolving of Problems Related to Due Process Rights -- e.g. defender's programs, para-legal and legal aid activities

In 1992, the "judicial system" that existed was an extension of the executive branch and this situation has not changed to date. The basic system is a creation of Vietnamese experts who collaborated with the Ministry of Justice in the 1980's for the creation of this system.

However, what has changed since 1992 is that there are now several services which have gone some distance to reduce the harshness of this system. A large number of persons known as defenders have been allowed to intervene in order to assist the accused from the time of their arrest. The defenders are also allowed to visit prisons and make representations on behalf of the accused. There have been several cases where either the accused has been acquitted or prisoners have been bailed out and other relief granted

due to the intervention of the defenders. The number of defenders has increased and there are many services for their training.

However, it would be misleading to consider the emergence of defenders and other para-legals as an indication of the beginning of an independent judicial system. The basic nature of the system, its inner relationship to the executive, and its way of dealing with sensitive issues has in no way changed. Also, the basic laws that are necessary for a proper functioning legal system have not come into existence.

There is, for instance, no credible penal code. Though there had been talks about drafting a penal code since 1993, there is no indication that any significant progress has been made in this field. There is no law relating to evidence. There is no credible criminal procedure code. The trial system is basically the sort of trial system which existed under the socialist model. In all cases, according to the unanimous opinion of close observers of the system, the basic form of evidence is confessions.

Without basic changes to this system, no amount of activities by defenders and other para-legals can guarantee the basic due process rights. It is unfortunate that particularly in the last two years, the agitation for the creation of these basic legal instruments has been given up. Further, sometimes on the basis of some relief granted due to the activities of the defenders, there has been an attempt to show that the judicial system has improved.

It is absolutely essential to make a distinction between community services which are directed towards reducing the rigors of a harsh system from the emergence of legal remedies and the establishment of the independence of the judiciary.

Training Programs for State Officers -- e.g. police and local authorities

Since the beginning of training for police and some local authorities by the provincial officers and two trainers of the UNTAC Human Rights Component, activities in this area have expanded vastly. Besides the training provided by the UN Centre for Human Rights, human rights NGOs also provide some form of training particularly to the police.

While this may be seen as a development of human rights education, this could also give rise to considerable confusion on the issue of training of police officers and other law enforcement officers in their professional duties and, in particular, on human rights protection.

The basic professional training of the police remains defective as it was in 1992. Development of an investigative police has not changed significantly. There has not been a drop in the crime rate or an improvement in the way of dealing with crimes. In fact, there is a common complaint that crimes are on the increase. Some observers argue that while some branches of the police have increased their capacities for investigations, they have in fact been prevented from carrying out their duties by various pressure groups.

Resolving these problems is essential for the promotion of the rule of law as well as for improvement of the police's conduct in relation to human rights implementation. It is a central duty of the human rights movement to constantly engage in an effective dialogue with the police and Government to advocate for improvements in this sphere. It is no substitute to purely conduct some training courses.

There need to be changes in policy and the law. NGO activities in this area, however, are rather limited. It may be said in general that the activities of the entire human rights movement in this vital area are extremely limited. In some cases, there is even a basically cynical attitude as to the possibilities of achieving any transformation in this particular area. However, if no improvements are made in policy and the law, the entirety of civil and political rights in Cambodia will not make any significant improvement.

On Economic, Social and Cultural Rights

Several NGOs have begun to expand their area of activism and education to economic, social and cultural rights. Several development NGOs have also begun to articulate their programs in human rights language. In the country too, there are some attempts for improvement of rights such as education and health. Though the improvements are rather small and beset with many inherent problems, such as in the attempt to improve school examination methods, these changes are significant and need to be considered when making any assessment of the development of human rights approaches in Cambodia.

However, several NGOs also have dilemmas on whether to embark into the area of economic, social and cultural rights. The discussion on this issue needs to improve so as to assist the NGOs to make their choices easier. In the present stage of development in Cambodia, a combination of the struggle for economic, social and cultural rights and for civil and political rights is inevitable.

This seeming division perhaps arose from the fact that when human rights work started in 1992, the UNTAC Human Rights Component took a deliberate decision to confine its work on monitoring of as well as education on civil and political rights. As a result, the initial training courses were basically on civil and political rights.

To meet the requirements of the country as well as of the human rights movement which now has expanded, it is extremely important to develop effective education modules for consciously promoting economic, social and cultural rights. In fact, this will in no way undermine educational work on civil and political rights. Basic developments in civil and political rights are an absolute pre-condition to the achievement of economic, social and cultural rights.

As there is much discussion in the Asian region for developing a combined approach on these issues, it would be useful for the Cambodian NGOs to work closely with these regional organizations to develop a suitable module for education on economic, social and cultural rights.

Capacity Building of NGOs

Most NGOs feel that the capacity of their activists has improved. Various organizations, such as the Human Rights Task Force on Cambodia, have played a considerable role in making this achievement possible. The activists' skills in teaching, monitoring and reporting have improved. The leadership capacity of many persons and management systems of NGOs has also improved.

However, with the expansion of the NGO movement, society has also placed greater trust in them. They are constantly called upon to undertake many new responsibilities. These responsibilities include playing a greater role as community leaders, in making representations on important national and provincial issues, in acting as opinion makers on many complex social issues, and in advocating on these issues to the international community. In short, to play the same roles as other responsible NGOs in countries which have stronger traditions of civil society.

However, the gap between the present capacities of most of the Cambodian NGOs and the capacities required to play their new roles is vast. There is a need for much more sophisticated training and therefore improvement of the training of trainers.

Training Modules

The early modules for human rights training in Cambodia were drafted in the Thai border camps. In fact, the modules were often designed to suit the requirements of Cambodian refugees staying in these camps during those times. As a result, except in the area of very broad concepts, these modules were not drafted to suit the requirements of the Cambodian civil society.

In fairness, it must be said that during those years, it was not possible to envisage what type of developments would take place in the political and social spheres in Cambodia. However, it must be said that there were several imaginative attempts to bring in ideas that could be useful to the emerging civil society in Cambodia. For example, Reverend Yos Hut developed many lessons on human rights on the basis of Buddhist conceptions.

The second stage of the development of modules in teaching human rights took place during the initial stages of the UNTAC mission. The basic textbook which was used was based on the one that was developed at the refugee camps. A group of Cambodians were trained to use this book and conduct lessons in the provinces. This group, while using the text, made various attempts to develop the material to suit their audience. Audiences included persons from civil society as well as local authorities.

The difficulties in teaching during this time was mostly due to the fact that human rights conceptions were mostly new. Thus, it is not surprising that one notices that some of the training programs on human rights are still done on the basis of this module.

The third stage of development of modules has come from the initiatives of the NGOs themselves. Developments in Cambodian society had an impact on the development of

content of these programs. It is in this area that the Human Rights Task Force has played a greater role than any other agency.

At this stage, a prime consideration has been to design programs to make Cambodian activists take a greater part in the monitoring of human rights in the country. Another noticeable feature of program development has been a participatory approach involving the NGO trainers who would later do the training themselves, particularly in the provinces.

The experiences gained during this time are quite vital to develop training modules further taking into consideration the vast changes that have been taking place in the Cambodian society and the greater sophistication acquired by the NGOs themselves.

Development of Audio-Visual Teaching Aids

There have been many initiatives in this area. These vary from simple pictures, posters, cartoons and other demonstrations and a few video materials. The video materials were used mostly during the early period of UNTAC and covered only very broad educational materials. In recent times, the Task Force and some of the NGOs have developed audio-visuals of their own.

Given the vast opportunities now available and the existence of a significant audience within Cambodia, considerable attention needs to be focused in this area. This will also constantly improve the effectiveness of trainers.

Development of Participatory Teaching Approaches

The early training programs on human rights in Cambodia were not based on a participatory approach for many reasons. The most important reason was the lack of common language between the teachers and the participants. Basic terms and conceptions had to be explained and this gave rise to a top to bottom approach in teaching. Moreover, due to the fear syndrome which was very visible during the early periods, Cambodian participants were unused to participating freely in any discussion.

There was also the cultural factor of hierarchical society. Besides, as the number of persons who conducted the basic training programs were foreigners, they too had cultural problems which prevented them from making the courses more relevant to local conditions and teaching in a more participatory way.

However, now there is a common language which is much more known and accepted by the human rights movement. There are also many Cambodians who have developed competence in teaching human rights. Over the years, some of the expatriates have begun to be more sensitive to cultural factors. Above all these, there is resentment against purely abstract forms of teaching.

The search for relevance and a greater demand for participation are becoming common features. Thus, there is a much more fertile ground for development of teaching

approaches which are participatory. Though this should require considerable difference in approach, many trainers such as the Task Force trainers have gone a long way to develop a more participatory approach. This effort needs to be further strengthened.

Difficulties in the Development of Training Programs

Conflict Between Popularization of Human Rights Concepts and Non-Recognition of Human Rights Concepts in the Institutional Sphere

As mentioned earlier, the human rights movement has been developing a common language shared by a significant number of persons. It may also be said that human rights language has become a common reference point in Cambodia. Even State officers and local authorities who, a few years ago, were generally hostile to human rights language now use it often themselves. Statements such as the need to improve the rule of law and the need to respect human rights are constantly being used during political discussions.

However, in the institutional sphere, the recognition of human rights has remained negligible. This is partly due to the slow development in the political sphere mentioned earlier. But from the NGO point of view, there is much that human rights education itself could contribute to gaining institutional recognition for human rights.

There is a need for the NGOs to recognize what institutional changes are fundamental to any recognition of human rights. For example, it is crucial for NGOs to advocate for the development of a basic legal structure -- which implies basic laws such as a credible penal code and evidence ordinance, a criminal procedure which lays down requirements of a proper trial system and other basics for the implementation of due process, and a clear laying down of the powers of different courts such as provincial courts, appeals courts the supreme court and other courts.

The development of a basic legal structure further implies improving the competence, including gender sensitivity, of those who are involved in implementing due process rights such as investigative police, judicial officers, prosecutors and lawyers. The improvement of competence requires opportunities for training as well as other structural changes such as salaries, etc.

Difficulties Relating to Type of Expertise That is Needed for Providing Technical Assistance to Build the Necessary Institutional Framework for Implementing Basic Human Rights

Often, there is a noticeable disparity between the requirements of institution building in the Cambodian context and the type of technical assistance that is usually provided for such purposes. If the NGOs are to play a vital role in improving the human rights situation in Cambodia, they should play the role of an opinion-maker in the selection of proper expertise for institution building in human rights related matters.

The Cambodian legal system which disappeared under the Pol Pot regime never re-appeared. The "legal framework" which came into being during the 1980s was basically one of a socialist model. Thus, the task faced in this area is to begin the rebuilding from scratch. Persons who were formerly involved in the working of the "legal system" in the 1980s (e.g. former Ministry of Justice employees, judges, prosecutors, etc.) and those who are now involved from outside (the defenders and other para-legals, judicial monitors and NGO workers who have provided assistance to prison projects) could provide valuable knowledge about the existing "system."

Caution should be exercised in the case of experts coming from developed countries who often fail to understand what it means to begin a system from scratch. They often presume the existence of many pre-conditions and attempt to work without understanding the working context. It is only after many months or even one or two years that they begin to realize that the presumptions on which they worked have not been correct. Since most experts do not stay for a very much longer period, their disillusionment does not result in any assistance to Cambodia.

Further, most experts are university graduates who have had little or no practical experience in courts. In fact, it would be rather difficult to get a lawyer from a first world country who has had several years of experience in law practice to work in Cambodia. Besides, even if it is possible, working within a highly developed court system could hardly be helpful to understanding Cambodian requirements.

Thus, experts from third world countries, particularly Asian countries, are likely to be more sensitive to local needs and more adept at attending to basic requirements. For example, lawyers and judges from that context who have had several years of experience could play an advisory role as well as providing other technical assistance such as drafting of basic laws, etc.

Aside from competence, there is also a need for understanding of and sensitivity to the local context. When these are absent, there can be much waste of time and resources. For example, the drafting of a penal code for Cambodia was officially initiated almost three years back. However, to date, there has been no output resulting from this work. There is not even any talk about improvement of the evidence law, the trial system, and other aspects of the legal system.

If the NGOs are to play an effective role for promoting human rights, they should become aware of the difficulties in gaining institutional recognition for human rights concepts. Mere abstract awareness of human rights ideas are no longer sufficient. Besides, the human rights movement is now mature enough to play a more effective role in gaining institutional recognition for human rights.

III. BASIC REQUIREMENTS FOR STRENGTHENING HUMAN RIGHTS WORK IN CAMBODIA

- In Cambodia, the approach to human rights should be long term and multi-dimensional. This is due to the nature of Cambodian institutions and the situation in which Cambodia finds itself.

- The short-term programs need to be constantly reviewed in terms of the changing social context and also in terms of the requirement of the long-term strategies. The tendency to replicate education modules which were developed quite some time ago needs to be consciously recognized and avoided.

- The requirements of training programs should be constantly related to the requirements of activities in the human rights field including campaigns for reforms, etc. The aim of the training programs is to make people participate in the realization of human rights. When divorced from this goal, human rights teaching could become sterile and even irrelevant.

- The need for more sophisticated training for already-trained persons should be considered a priority. It is the increase of competence of the persons who are already committed to human rights that will lead to the expansion as well as the improvement of quality of others. If this aspect is neglected, human rights programs will tend to degenerate and become irrelevant to the actual requirements of society.

- An important aspect of training programs is to build awareness on the necessity of reforms in order to get institutional recognition for human rights. For a considerable period to come issues relating to the rule of law, building of the basic legal system, and a basic legal framework for protection of human rights in the field of due process rights, rights against torture, children's rights and the basic rights of women, should be brought to the attention of those who undergo training.

- The development of training materials would facilitate better communication. More time should be spent on preparation of these materials rather than mere replication of training workshops. In assessing the work of NGOs, mere statistics on how many workshops that have been held and how many people participated should not be used as a valid criteria. The quality of the training program, its usefulness for the participants as well as those whom the participants would be related to should be assessed constantly. Mere quantitative approaches would lead to inner tiredness and frustration and would not contribute to gaining recognition for human rights. Thus, proper planning of training programs is vital and the development of audio-visuals is an essential part of this.

- Modern communication facilities provide enormous potential for those who are engaged in monitoring work. Training programs should include efforts to create awareness of the enormous potential of the communication advances. The trainees should be encouraged to develop their skills in these fields. Specific training programs directed towards improvement of these skills should be held from time to time.

- Exchange of experience is part of training trainers. More opportunities should be provided for effective communication between persons having different experiences. The Cambodian human rights movement could greatly benefit from the persons who are engaged in human rights work in other countries and particularly in Asian countries. The human rights training programs particularly based on experiences should be studied carefully in order to provide similar facilities for Cambodian NGO activists.

- In making proposals for funding, the above should be considered. For example, expenses for further training of trainers, development of audio- visuals, travel expenses of participants, and others should be included.

- In making funding proposals, in the present context of Cambodia, the proposal should be for sufficient length of period rather than for short-term projects only. In order to develop and carry out better training programs, the staff should feel the greatest stability in their jobs. On this issue, there should be closer discussions between the support groups from outside and the local NGOs.

Basil Fernando
Executive Director
Asian Human Rights Commission &
Asian Legal Resource Centre
Flat E, 3rd Floor, Kadak Building, 171 Sai Yee Street,
Kowloon, Hongkong.
Tel: +(852) - 2698-6339 Fax: +(852) - 2698-6367
Email: alegrcen@hk.super.net / ahrchk@hk.super.net

July, 1996